IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 400 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : To be circulated to subordinate Criminal Courts.

RAJESHBHAI PITAMBARBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners

MR AJ DESAI, Learned APP for Respondent.

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 26/02/2001

ORAL JUDGEMENT

1. Rajeshbhai Pitambarbhai Parmar and other original accused have filed this Criminal Revision Application under Section 397 of the Code of Criminal Procedure (hereinafter be referred to as the Code) challenging the order dated 30th August, 2000 passed by the Additional

Sessions Judge, Nadiad, by which the learned Judge has altered the charge. The learned Judge by the said order added the charge against all the accused under Section 176 read with Section 114 of the Indian Penal Code as well as Section 304(B) of the Indian Penal Code.

2. The facts giving rise to this application are as under :-

2.1 It is the case of the applicants that the applicants - accused was charged in connection to the Criminal Case registered at Mehelav Police Station bearing C.R.No.I 7/99 for offences punishable under Sections 306, 498-A, 201 and 114 of Indian Penal Code. The said charge was filed somewhere on 10th May, 2000.

3. After aforesaid charge was framed according to the prosecution, six witnesses were examined P.W.1 Dr.Babubhai Poojabhai Parmar Ex.12, P.W.2 Dr.Dineshkumar Laljibhai Madhukar Ex.14, P.W.3 - Dr.Axay Rajnikant Shah Ex.16. P.W.4 - Pushpaben, complainant the mother of deceased - Nehaben, P.W.5 - Fatabhai Chandubhai Ex.30 and P.W.6 - Mohanbhai Dinabhai Harijan Ex.31.

4. The Pushpaben, the mother of deceased Nehaben has filed a complaint somewhere on 19th January, 1999. On the basis of the said complaint, the charge was framed in and it was stated that the daughter of complainant Nehaben, aged about 22 years was married with Rajeshbhai Pitambarbhai Parmar, accused No.1. It has been stated that there was physical and mental torture by all the four accused particularly through accused no.4 and has also demanded certain amount-dowry from the deceased Nehaben somewhere on 17/1/99 and, therefore, difference and dispute arises. In view of the same, deceased Nehaben took certain medicine of sulphoes and that is reason, she expired. It has been stated that with a view to destroy the evidence, the husband of Nehaben and others did not allow to peform the postmortem of the dead body. She was taken to cremation ground and ultimately she was cremated particularly at late night at 8:30 p.m. It has also stated that because of this complain, in view of the same, a charge was framed under Section 304(B) of the Indian Penal Code and also Section 498-A, 114 read with Section 201 of Indian Penal Code. Thereafter, Additional Public Prosecutor has filed an application dated 19/7/2000 for altering the charge under Section 216 of the Code. In view of the said application, it was stated that deceased Nehaben has committed suicide. All the accused were bound to inform about the police, but they did not inform the police and offence punishable

under Sections 498(A), 306, 201 and 114 of the Indian Penal Code committed by them. It was also stated that the marriage took place somewhere on 21st May, 1996 and incident has taken place on 17th January, 1999 and there was less than seven years. The charge under section 306, 498-A, 114 read with section 201 of Indian Penal Code may also be added. The leaned APP has filed an application on 19th July, 2000 for addition of charges.

5. The said application, was kept for hearing and accused nos.2 to 4 have objected by their objection at Ex.33 in this behalf. The said application was allowed on 30th August, 2000. The learned Judge by his order dated 30th August,2000 has added the charge in connection with Section 176 and Section 114 of Indian Penal Code as well as charge under Section 304(B) read with Section 114 of the Indian Penal Code.

6. Being aggrieved and dissatisfied with the aforesaid order, alteration of the charge under section 216 of the Code, the present petitioners namely husband, his father and his mother and his sister filed this Revision Application before this Court.

Petitioner's Counsel Contention :-

7. Mr.B. S. Patel, learned counsel for the petitioners - accused has submitted that lower Court has seriously erred in exercising the jurisdiction under section 218 of the Code which was not vested with it in view of the peculiar facts and circumstances of the case. He has further submitted that lower Court has seriously erred in altering the charge making it for larger conviction after the commencement of the trial which has resulted into serious prejudice to the accused. He has further submitted that lower Court has seriously erred in amending the charge on the evidence given by the complainant on oath which was not stated in the original complaint which had been treated as FIR under Section 154 of the Code. He has further submitted that the learned Judge has erred in not considering the definition of dowry under Section 2 of the Dowry Act before framing the charge against the applicants. He has further submitted that lower Court has seriously erred in not considering the prejudice likely to be caused to the applicants if the charge is framed in the midst of the trial. He has further submitted that the learned Judge has seriously erred in framing the charge without assigning any reason, hence it is a non speaking order. He has further submitted that lower Court has seriously erred in adding the charge of offence under Section 176 of Indian Penal

Code which was not at all there at the time of framing charge on 10th May, 2000.

8. The learned counsel for the petitioners - accused has stated that learned Judge has committed material irregularities in altering the charge and that has resulted into miscarriage of justice and this Court must interfere with it. The learned counsel for the petitioners - accused has relied upon the judgment in the case of L. K. ADVANI & ORS. v/s. CENTRAL BUREAU OF INVESTIGATION, reported in 1997 (4) Crimes 1, Delhi High Court. The Hon'ble Delhi High Court has observed in para-44 at page no.23 are as under :-

"44. It is manifest from above that the charges can be framed against an accused person only in those discerning few cases where the Court comes to the conclusion that the prosecution has shown a prima facie case against the accused and there is evidence before the Court which is capable of being converted into legal evidence later on during the subsequent proceedings after the framing of the charges. The matter with regard to the framing of the charges came up for consideration in a catena of authorities wherein time and again it was observed that the prosecution must show a prima facie case against the accused in order to enable the Court to frame a charge against him. If the evidence before the Court is of such type which if un-rebutted and un-challenged by way of cross-examination would not be sufficient enough to convict the accused ultimately then the Court would not be justified in framing the charge against the accused. The Court at that stage is under no obligation to make an elaborate enquiry by sifting and weighing the material to find out a case against the accused beyond a reasonable doubt which it is required to do at the time of the final hearing. The Judge at that preliminary stage is simply required to find out that there was material which may lead to the inference that the accused has committed an offence. Thus the charge can be framed by the Court against an accused if the material placed before it raises a strong suspicion that the accused has committed an offence. In other words, the Court would be justified in framing the charges against an accused if the prosecution has sown the seed in the form of the incriminating material which has got the potential to develop itself into a

full-fledge tree of conviction later on."

9. He has further submitted that in this case, about six witnesses have been examined and, therefore, it will materially prejudice the accused particularly accused prosecution for recalling the witnesses who were examined earlier. He has further submitted that in any view of the matter, the demand of dowry only by accused Nos.1 & 4 whereas, the prosecution has levelled charge under Section 304(B) of Indian Penal Code against all accused and, therefore, all alteration charge is bad in law.

Contentions of learned Public Prosecutor :-

10. Mr.A. J. Desai, learned APP for the respondent State has tried to support the reasoning of the learned Judge particularly altering the charge framed by the learned Judge. He has submitted that Section 216 along with Sections 217 and 218 of the Code gives ample power and jurisdiction and to frame alter charge. Section-216 of Code of Criminal Procedure reads as under :-

"216 (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary."

10.1 The learned APP for the respondent state has also referred to the application made by the Public Prosecutor at the trial Court in this behalf and also order of the learned Judge on page nos.8 and 9 where the learned Judge

has passed a short and speaking order as to why he is altered the charge against the accused. He has stated that as regards the demand of dowry is concerned, the charge against accused under Section 304(B) of the Indian Penal Code is concerned, there was already material in the original charges. He has also stated that the material placed before the Court raises a strong suspicion that the accused has committed an offence and, therefore, the trial Court was justified framing the additional charge against the accused. He has submitted that the prosecution has shown the seed in the form of the incriminating material which has got the potential to develop itself into a full-fledged tree of conviction later on.

11. Mr.A. J. Desai, learned APP for the respondent State has stated that the Code of Criminal Procedure gives ample power for altering the charge. He has submitted that the addition must be "always , of course, subject to the limitation that no course should be taken by reason of which the accused may be prejudiced either because he is not fully aware of the charge made or is not given full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred". He has also submitted that after framing a new alter charge as per Section 217 of the Code, any witnesses can be recalled by the accused and accused will right to cross-examine witnesses, in view of the alter charge. He has relied upon the judgement of the Hon'ble Apex Court in the case of KANTILAL CHANDULAL MEHTA v/s. STATE OF MAHARASHTRA AND ANOTHER, reported in AIR 1970 Supreme Court, 359. The Hon'ble Supreme Court has observed in para-3 at page-362 are as under :-

> "In our view the Criminal Procedure Code gives ample power to the Courts to alter or amend a charge whether by the trial Court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him. The power of the Appellate Court is set out in Section 423, Criminal Procedure Code and invests it with very wide powers. A particular reference may be made to Cl. (d) of sub-section (1) as empowering it even to make any amendment or any consequential or incidental order that may be just or proper."

Conclusions :-

12. I have considered the facts of the case and I have also gone through the original charge, evidence of Pushpaben, the mother of deceased Nehaben and other evidence on record, the application filed by learned APP for addition of the charge, reasoning of the learned Judge for altering the charge, the statement of deceased also recorded before her death and also the provisions of Sections 216, 217 and 218 of the Code and also the judgment of Delhi High Court in the case of L. K. ADVANI & ORS. v/s. CENTRAL BUREAU OF INVESTIGATION, and judgment of the Hon'ble Supreme Court in the case of KANTILAL CHANDULAL MEHTA v/s. STATE OF MAHARASHTRA AND ANOTHER,(Supra). In my view, as per the provisions of Section 216 of the Code, the Court has ample power and jurisdiction to alter the charge, the same can be done at any time before judgment is pronounced. In my view, there is no prejudice to the accused because only part of the proceedings have been initiated and other evidence is to be recorded in future. Not only that Section 217 of the Code, the learned Judge will give an opportunity to the accused to recall any witnesses when the charge altered and to cross-examine them in future. In my view, the prosecution has already started about the death in connection with dowry. However, subsequently the charge under Section 304(B) of the Indian Penal Code is added. It may be stated that in this case the incident took place somewhere at 8:30 p.m. regarding the death of Nehaben, the accused No.1 and his family members did not wait for the relatives of the deceased Nehaben and cremated her at late night. After two days, the prosecution has taken out the deadbody and performed the postmortem and then came to know that deceased consumed sulphous drugs and committed suicide. In my view, the learned Judge has power and jurisdiction to alter the charge and he has used his discretionary jurisdiction for altering the charge and he has given cogent and convincing reason for the same. Therefore, I do not see any reason to interfere with the order of the learned Judge in altering charge. I do not find any substance in the contention of the learned counsel for the petitioners I however find considerable substance in the submission of the learned APP particularly Sections 216, 217 and 218 of the Code and the judgment of the Hon'ble Supreme Court. In fact, the judgment of the Delhi High Court relied by the learned counsel for the petitioner to some extent help to the case of prosecution.

13. In view the same, this Criminal Revision Application is dismissed, with no order as to costs.

Rule is discharged.

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(vrpanchal)